OPINION OF ADVOCATE GENERAL TIZZANO

delivered on 5 July 2001 [1]

I — Introduction

1. By the present action brought on 3 August 1999 under Article 226 EC, the European Commission has requested the Court of Justice to declare that the French Republic has failed to fulfil its obligations to draw up waste disposal plans for all its territory and all its waste and has failed to include in already existing plans a specific chapter on the disposal of packaging waste. Those obligations derive from Article 7(1) of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39; hereinafter 'Directive 75/442'), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32; hereinafter 'Directive 91/156'), Article 6(1) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20; hereinafter 'Directive 91/689') and Article 14 of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10; hereinafter 'Directive 94/62').

1 — Original language: Italian.

II — Legal framework

A — *Community legislation*

1. Directive 75/442 and the amendments made by Directive 91/156

2. Directive 75/442 is the earliest of the directives relevant to the present case. It is worth noting therefore that that directive has been the subject of various amendments over the years, in particular by Directive 91/156, which replaced the first 12 articles with a view to increasing the effectiveness of the instruments designed to pursue its objectives.

3. The directive in question aims to guarantee waste disposal and recovery by encouraging the adoption of measures intended to restrict the production of waste by promoting 'clean' technologies and products which can be recycled and reused (see fourth recital of Directive 91/156). In

particular, Article 5, in the original version, provided for Member States to establish or designate 'the competent authority or authorities to be responsible, in a given zone, for the planning, organisation, authorisation and supervision of waste disposal operations'.

4. More specifically, Article 6, in the original version, went on to provide that:

'The competent authority or authorities referred to in Article 5 shall be required to draw up as soon as possible one or several plans relating to, in particular:

— the type and quantity of waste to be disposed of,

— general technical requirements,

— suitable disposal sites,

— any special arrangements for particular wastes.

The plan or plans may, for example, cover:

— the natural or legal persons empowered to carry out the disposal of waste,

— the estimated costs of the disposal operations,

— appropriate measures to encourage rationalisation, of the collection, sorting and treatment of waste.'

5. As regards the time-limit for the transposition of Directive 75/442, Article 13, in the original version, provided:

'Member States shall bring into force the measures needed in order to comply with this Directive within 24 months of its notification and shall forthwith inform the Commission thereof.'

6. That notification occurred on 18 July 1975.

7. Subsequent to the amendments made by Directive 91/156, the abovementioned Article 6 of Directive 75/442 now provides:

'Member States shall establish or designate the competent authority or authorities to be responsible for the implementation of this Directive.'

8. In its turn, Article 7(1) of Directive 75/442, in the text amended by Directive 91/156, now provides:

'In order to attain the objectives referred to in Articles 3, 4 and 5, the competent authority or authorities referred to in Article 6 shall be required to draw up as soon as possible one or more waste management plans. Such plans shall relate in particular to:

— the type, quantity and origin of waste to be recovered or disposed of,

— general technical requirements,

— any special arrangements for particular wastes,

— suitable disposal sites or installations.

Such plans may, for example, cover:

— the natural or legal persons empowered to carry out the management of waste,

— the estimated costs of the recovery and disposal operations,

— appropriate measures to encourage rationalisation of the collection, sorting and treatment of waste'.

9. As regards the time-limit for the transposition of Directive 91/156, the first paragraph of Article 2(1) provides that:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 April 1993. They shall forthwith inform the Commission thereof.'

10. I also note that according to Article 1(a) of Directive 75/442, as amended by Directive 91/156, 'waste' shall mean:

'any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard.

The Commission... will draw up, not later than 1 April 1993, a list of wastes belonging to the categories listed in Annex I. This list will be periodically reviewed and, if necessary, revised by the same procedure.'

11. On the basis of that provision, on 20 December 1993 the Commission adopted Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442 on waste (OJ 1993 L 5, p. 15). That list is called the 'European Waste Catalogue'.

2. Directive 91/689

12. The object of Directive 91/689 is to approximate the laws of the Member States on the controlled management of hazardous waste (see Article 1(1)). Article 6(1) provides:

'As provided in Article 7 of Directive 75/442/EEC, the competent authorities shall draw up, either separately or in the framework of their general waste management plans, plans for the management of hazardous waste and shall makes these plans public.'

13. Pursuant to Article 10(1) of Directive 91/689, as replaced by Council Directive 94/31/EC of 27 June 1994 (OJ 1994 L 168, p. 28):

'The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the Directive before 27 June 1995. They shall forthwith inform the Commission thereof.'

14. It should be added that, pursuant to Article 1(4) of Directive 91/689, on 22 December 1994, the Council adopted Decision 94/904/EC establishing a list of hazardous waste items (OJ 1994 L 356, p. 14).

15. I would recall, next, that Directive 91/689 replaced, by repealing it, Council

Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste (OJ 1978 L 84, p. 43: hereinafter 'Directive 78/319'). Article 12(1) of that directive provided:

'The competent authorities shall draw up and keep up to date plans for the disposal of toxic and dangerous waste. The plans shall cover in particular:

— the type and quality of waste to be disposed of;

— the methods of disposal;

— specialised treatment centres where necessary;

— suitable disposal sites.

The competent authorities of the Member States may include other specific aspects, in particular the estimated cost of the disposal operations.'

16. As regards the time-limit for transposing Directive 78/319, Article 21(1) of the directive provided:

'Member States shall bring into force the measures necessary to comply with this Directive within 24 months of its notification. They shall forthwith inform the Commission thereof.'

17. That notification occurred on 22 March 1978.

3. Directive 94/62

18. Directive 94/62 aims 'to harmonise national measures concerning the management of packaging waste in order, on the one hand, to prevent any impact thereof on the environment of all Member States as well as of third countries or to reduce such impact, thus providing a high level of environmental protection, and, on the other hand, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the Community' (see Article 1(1)).

19. Article 14 of Directive 94/62, entitled 'Management Plans', provides:

'In pursuance of the objectives and measures referred to in this Directive, Member States shall include in the waste management plans required pursuant to Article 7 of Directive 75/442/EEC, a specific chapter on the management of packaging and packaging waste... .'

20. Pursuant to Article 22(1) of Directive 94/62:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 30 June 1996. They shall immediately inform the Commission thereof.'

B — *National legislation*

21. The transposition measures notified to the Commission by the French Republic, such as were in force at the expiry of the time-limit fixed in the reasoned opinion of 5 August 1998, are contained in Law No 75-633 of 15 July 1975 on the disposal of waste and the recovery of materials [loi relative à l'élimination des déchets et à la récupération des matériaux; *Journal officiel de la République française* (JORF) of 16 July 1975, p. 7279], as subsequently amended and supplemented by Law No 92-646 of 13 July 1992 on the waste disposal and registered environmental protection centres (loi relative à l'élimination des déchets ainsi qu'aux installations classées pour la protection de l'environnement; JORF of 14 July 1992, p. 9461) and Law No 95-101 on increasing environmental protection (loi relative au renforcement de la protection de l'environnement; JORF of 3 February 1995, p. 1840; hereinafter 'Law No 75-633').

22. The first paragraph of Article 10 of Law No 75-633 provides:

'National waste disposal plans shall be drawn up by the Minister for the Environment for certain categories of waste listed by decree..., on the basis of their noxiousness or special treatment or storage requirements.' [2]

23. Pursuant to the first paragraph of Article 10-1 of Law No 75-633:

'A regional or inter-regional plan for the disposal of special industrial waste shall be drawn up for every region.'

2 — Unofficial translation, as for the national provisions that follow.

24. The first paragraph of Article 10-2 of Law No 75-633 provides:

'A departmental or inter-departmental plan for the disposal of domestic waste and other waste referred to in Article L.373-3 of the Communal Code governing communes shall be drawn up for every department.'

25. Those legislative provisions were subsequently specified by Decree No 93-139 of 3 February 1993 on plans for the disposal of domestic and similar waste (décret relatif aux plans d'élimination des déchets ménagers et assimilés; JORF of 4 February 1993, p. 1874) and Decree No 93-140 of 3 February 1993 on plans for the disposal of waste other than domestic and similar waste (décret relatif aux plans d'élimination de déchets autre que les déchets ménagers et assimilés; JORF of 4 February 1993, p. 1875).

26. Those decrees were subsequently replaced by Decree No 96-1008 of 18 November 1996 on plans for the disposal of domestic and similar waste (JORF of 24 November 1996, p. 17138: hereinafter 'Decree No 96-1008') and by Decree No 96-1009 of 18 November 1996 on plans for the disposal of special industrial waste (décret relatif aux plans d'élimination de déchets industriels spéciaux; JORF of 24 November 1996, p. 17140). The amendments made by Decree No 96-1008 included the introduction of the obligation to provide, within the framework of the plans for the disposal of domestic and similar waste, an indication of the solutions adopted for the disposal of packaging waste.

III — Analysis

27. By the present action, the Commission complains that the French Republic has failed to comply with Directives 75/442 (as amended), 91/689 and 94/62 in view of the continuing failure to complete the waste disposal plans in terms of their geographical and material coverage, and in view of the failure to include in those plans a specific chapter on packaging waste. I will analyse the three complaints one at a time in sequence.

A — *On the incomplete geographical coverage of the management plans*

1. Introduction

28. First, the Commission complains that at the time when it lodged its application, according to the information supplied by the French authorities, 11 of the 100 French departments and 6 of the 26 French regions still did not have a waste management plan despite the fact that the time-limits for the transposition of Directive 75/442, as amended by Directive 91/156, and of Directive 91/689 had expired on 1 April 1993 (but originally already on 18 July 1977) and 27 June 1995 respectively.

29. For its part, the French Government recognises the merits of the complaint, at least as regards 10 of the departments and 4 of the regions. However, it objects that the absence of a plan does not constitute an infringement of Article 7(1) of Directive 75/442 (as amended by Directive 91/156) and Article 6(1) of Directive 91/689 for a number of reasons related to the rather 'flexible' nature of the time-limit imposed on the Member States to comply with those directives, the difficulties encountered by the French authorities in drawing up those plans and the fact that, in the process of transposition, the national legislature set out more ambitious objectives than those provided for by the directives in question.

2. The question of compliance with the directives within the prescribed time-limits

30. Let us begin with the first point, that is the question of complying with the directives within the prescribed time-limits.

31. According to the French Government, Article 7(1) of Directive 75/442 (and Article 6(1) of Directive 91/689 which refers thereto) does not require that management plans be implemented within the prescribed time-limit for the transposition of those directives. It maintains that the provisions in question impose on the competent national authorities only an obligation to draw up 'as soon as possible' one or more management plans without necessarily implying total coverage of the national territory within the prescribed time-limit. For the directives in question to be able to be regarded as implemented within the prescribed time-limits, it could thus be sufficient for the national authorities to furnish proof of having acted, within the prescribed time-limit, with the diligence necessary for the preparation of the tasks necessary to obtain the result intended by the directives: that is to say that they have established a relevant legal framework, have embarked upon work of a technical nature and made the necessary provisions for the subsequent drafting of the plans.

32. However, this is not the view of the Commission which considers that the phrase 'as soon as possible' cannot be interpreted in such a way as to delay implementation of the directives. The directives imposed precise time-limits, 'not later than' which the Member States were obliged to comply with them in full. Accordingly, it would not suffice for the Member States to furnish proof of their diligence in setting in motion the procedures laid down and in making provision for the necessary steps. Given that the directives impose an obligation of result, it was that result that the Member States were obliged to guarantee within the prescribed time-limits for transposition. At the hearing, the Commission subsequently made it clear that the phrase 'as soon as possible' was probably intended to take into account, in this case, any time that might be required to deal with unforeseen difficulties (for example, the need to review plans or take the necessary steps following judicial annulment of those plans) that could justify a delay in the full implemen-

tation of a directive; the national authorities remained obliged, however, to introduce provisions at the earliest opportunity in keeping with the directive's intention. In any event, the Commission concludes, not even a wide interpretation of that phrase could justify a failure to act such as that of France which continues to this day despite the long period of time that has elapsed since the expiry of the time-limit for the transposition of the directives in question.

33. For my part, I note at the outset that the contested phrase is not only not particularly clear, but is not even one of the most frequently employed in Community acts and is even less so couched in the terms in which it is employed by the directives in question. Where, in fact, the already limited number of Community provisions employ that phrase (for the most part in respect of obligations to forward data and information) it is usually followed by an unequivocal 'and not later than...'. [3] Even more rare are the cases in which the phrase appears completely by itself without further qualification, precisely as in the directives in question. [4]

34. Obviously, that only accentuates the intrinsic ambiguity of the phrase in the context of those directives and its apparent contradiction with the provisions which lay down precise time-limits for their transposition, an ambiguity to be traced, in all probability, to one of those compromises that not infrequently mark, in the Community authorities' negotiations for the implementation of such complex directives, as appears to be borne out by comparison with the Commission's proposal leading to Directive 75/442 in which, in fact, that phrase does not appear at all. [5] It is also for that reason that I consider it in any event advisable to avoid any pretext for developing a general analysis of that point and to limit instead the interpretation of the phrase to its specific context, as suggested, moreover, by the Commission.

35. That said, and returning to the two arguments at issue, I must say that both of

3 — See, for example, Article 1(5) of Council Directive 98/93/EC of 14 December 1998 amending Directive 68/414/EEC imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products (OJ 1998 L 358, p. 100); third indent of Article 7(3) of European Parliament and Council Directive 1999/2/EC of 22 February 1999 on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation (OJ 1999 L 66, p. 16); and Article 12 of European Parliament and Council Directive 2000/26/EC of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance Directive) (OJ 2000 L 181, p. 65).

4 — See, for example, Article 1(2) of Commission Directive 1999/97/EC of 13 December 1999 amending Council Directive 95/21/EC concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) (OJ 1999 L 331, p. 67); and Article 12(4) of Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ 2000 L 169, p. 1).

5 — See Article 10 of the Council's proposal for a directive on waste disposal (OJ 1974 C 142, p. 6).

them, albeit to a different extent and for different reasons, leave me perplexed. The Commission's argument seems to me to be too reductive because, taken to its logical extreme, it would mean that the phrase in question should be regarded as if it had never been written. However, the fact that that phrase is used here but not elsewhere must, it seems to me, have some significance. Moreover, the Commission itself has acknowledged that that phrase implies a certain degree of tolerance towards difficulties that may be encountered by national authorities, even if in the examples it has given and above all in the general approach it has adopted it has gone too far in limiting its scope of application. In its turn, the French argument seems to me to go too far in the opposite direction because, at least for the present purposes, it completely negates the provision concerning the time-limit for the transposition of the directives either by making that time-limit flexible and uncertain, replacing it by an indefinite expiry date, or by making it vary from State to State thereby undermining the uniform application of the directives.

36. It is scarcely necessary to point out that the fixing of a time-limit for the transposition of a directive is intended to guarantee certainty and uniformity with regard to that directive's application in all Member States, and that therefore it may be departed from only in exceptional circumstances and for specific reasons. [6] Moreover, if ever confirmation were needed of that self-evident observation, one only need recall that precisely because of the failure to transpose the directives in question within the prescribed time-limits, the Commission has initiated various infringement procedures against Member States and those procedures, apart from those still in progress [7] or already satisfactorily concluded in the Commission's favour, [8] have all been resolved with judgments against the State concerned. [9] While it is true that in all the proceedings taken so far no question of interpretation of the phrase 'as soon as possible' has been raised, as in the present case, it is nevertheless also true that in those cases the Court has consistently judged the delays by the Member States severely without ever raising any doubt that that phrase could in some way influence the manner in which such delays are assessed. On the contrary, it has very clearly ruled that respect for 'the more specific obligations of drawing up a waste disposal plan and drawing up, and keeping up to date, plans for the disposal of toxic and dangerous waste, imposed by Article 6 [now Article 7(1)] of Directive 75/442 and Article 12 of Directive 78/319 [equivalent to Article 6(1) of Directive 91/689] respectively... was necessary in order for the objectives [of those directives] to be fully achieved'; [10] and judged as 'serious' the failure to comply with those obligations within the prescribed time-limits, [11] even if limited to a very small part

6 — See, for example, Cases C-101/84 *Commission* v *Italy* [1985] ECR 2629, paragraph 16; C-217/88 *Commission* v *Germany* [1990] ECR I-2879, paragraph 33 and C-50/94 *Greece* v *Commission* [1996] ECR I-3331, paragraph 39, where further claims are made.

7 — See Cases C-461/99 *Commission* v *Ireland*; C-466/99 *Commission* v *Italy*; C-35/00 *Commission* v *United Kingdom* and C-132/00 *Commission* v *Greece*.

8 — See Case C-401/00 *Commission* v *Luxembourg* removed from the register by order of 13 June 2001, following discontinuance by the Commission.

9 — See Cases C-33/90 *Commission* v *Italy* [1991] ECR I-5987; C-45/91 *Commission* v *Greece* [1992] ECR I-2509 and C-387/97 *Commission* v *Greece* [2000] ECR I-5047.

10 — Case C-387/97 *Commission* v *Greece*, cited above, paragraph 95.

11 — Ibid.

of the territory, such as a valley [12] or a single district. [13]

37. If that is the situation, then what meaning should be attributed to the phrase 'as soon as possible' given that, if it is included in certain provisions of the directives in question, whatever the reasons for or the moment of its inclusion, it must have some meaning and function? In order to answer that question, it seems to me that an initial observation is clearly called for, namely that the margin of uncertainty and flexibility inherent in that phrase is linked to the undeniable complexity of the obligations that those directives impose on the Member States and particularly to the awareness, which the Commission itself appears to share, of the difficulties that normally accompany the drafting of waste management plans for the whole of the national territory. In that perspective, then, it could be maintained that the insertion of the phrase into the directives in question stems from the awareness of the possibility, and perhaps even the probability, that such difficulties are particularly pertinent and mean that Member States must have greater leeway with regard to time. If, however, despite that, the directives make no provision for derogations from the time-limits for their transposition, it must be concluded that the foreseeable difficulties cannot of themselves authorise, notwithstanding the phrase in question, an automatic extension of those time-limits. However, in order that such a possibility may be taken into account without being abused and, above all, in order that it may be reconciled with general principles and the obligation to comply with the time-limit for transposing directives, extremely precise and rigorous conditions are obviously required. In particular, in my opinion, at the very least the difficulties referred to must be major difficulties with an objective basis; there should be clear proof of the diligent steps taken by the national authorities to carry out with the greatest solicitude the obligations laid down by the directive; the Commission should be notified in good time of the need for (or risk of) going beyond the time-limit; the situation should be monitored together with the Commission, having recourse, rather, to its collaboration in accordance with the principle of sincere and mutual cooperation; and the delay should be contained within time-limits that are strictly necessary.

38. However, if it is accepted that such may be the meaning and scope of the phrase 'as soon as possible', then in my opinion it is truly difficult to conclude that the abovementioned conditions apply in the present case. No matter how major the difficulties encountered by France may be considered and no matter how diligent it may have been in its efforts to implement the directives in full, the fact remains that the delays under consideration are indeed excessive and cannot be justified even on the widest interpretation of the phrase in question. On that point I merely note that, over and above the various amendments made to Directives 75/442 and 78/319, the time-limits for complying with the clear obligations still imposed by those directives expired on 18 July 1977 and 22 March

12 — Case C-365/97 *Commission* v *Italy* [1999] ECR I-7773, paragraphs 69 and 70.

13 — Case C-45/91 *Commission* v *Greece*, cited above.

1980 respectively. Yet the delays would be equally excessive even if account were taken only of the period from 1 April 1993 or 27 June 1995 (time-limits for the transposition of Directives 91/156 and 91/689) and October 1998 (expiry of the time-limit of two months indicated in the reasoned opinion of 5 August 1998 addressed to the French Republic). [14]

39. For that reason, I cannot associate myself with the charge of irrationality levelled at the Commission by the French Government on the grounds that all the French territory was already covered by waste management plans when the present procedure was initiated and that the Commission did not appreciate the diligence shown by the national authorities in ensuring that 85-90% of the departments and regions had waste management plans after years of effort expended to transpose Directives 75/442 and 91/689. It is even more difficult for me to associate myself with that charge if account is taken of the rigorous positions taken in the Community case-law on the requirements that the directives in question and the motives that inspire them be fully and wholly implemented: [15] motives that are based on the idea that 'the consequences of non-compliance with the obligation under the first paragraph of Article 4 of the amended directive are likely, by the very nature of that obligation, to endanger human health and the environment even in a small part of the territory of a Member State'. [16]

3. On the difficulties encountered by the French authorities

40. As noted above, the French Government also maintains that the infringement with which it is charged may be justified on the ground that it has encountered a number of difficulties, such as the decision by the Midi-Pyrénées region to make provision itself for drawing up the regional plan instead of leaving it to central government or the particular technical complexity involved in drawing up plans for the islands (Corsica and Guadeloupe) or for overseas territories (Guyana) compared to plans for

14 — Nor should it be forgotten, for the purposes of a better appreciation of the basis of the French argument concerning the alleged restrictive nature of the time-limits for the transposition of the directives in question, that the Court has consistently held that 'the governments of the Member States participate in the preparatory work for directives and must therefore be in a position to prepare within the period prescribed the legislative provisions necessary for their implementation' (Case C-301/81 *Commission* v *Belgium* [1983] ECR 467, paragraph 11).

15 — The Court has ruled as 'considerable' an infringement of those obligations that lasted for three years (see Case C-387/97 *Commission* v *Greece*, cited above, paragraphs 26 and 98, with reference to the period which had elapsed between the entry into force of the EU Treaty and the Commission's reasoned opinion). I note that the Court, in an equally strict ruling, held as insufficient the mere adoption of a general provision whereby a Member State entrusted to the regions the task of drawing up waste management plans, without those regions subsequently taking any concrete steps to adopt those plans within the time-limit prescribed for transposition (see Case C-33/90 *Commission* v *Italy*, cited above, paragraphs 22 to 25, with reference to the previous Article 6 of Directive 75/442 and Article 12(1) of Directive 78/319, now repealed).

16 — Case C-365/97 *Commission* v *Italy*, cited above, paragraph 70.

the regions of mainland France. Moreover, it claims that the failure to adopt certain departmental plans is due, in particular, to complex geographical situations (Paris) or decisions by the judicial authorities.

41. In light of what I have said a little earlier, however, I am of the opinion that such arguments cannot justify such consistent delays. On the other hand, I must point to the settled case-law of the Court, repeated on several occasions also in relation to the implementation of the directives in question here, according to which 'a Member State may not plead domestic difficulties, such as difficulties of implementation which emerge at the stage when a Community measure is put into effect, to justify a failure to comply with obligations and time-limits laid down by Community law'. [17] According to well-known case-law, [18] the French authorities would have been able to justify their failure to comply or late compliance only if they had demonstrated that it was objectively impossible to fulfil the specific obligations imposed by Directives 75/442 and 91/689. However, in the present case it does not appear to me that the difficulties complained of amount to cases of objective impossibility, nor have those authorities involved them as such.

4. On the objectives of the French legislature

42. Finally, while still attempting to justify the delay in question, the French Government stresses that the national legislature has set out objectives which are more ambitious than those pursued by Directives 75/442 and 91/689 with a view, in particular, to the early transposition of Directive 1999/31 [19] in relation to the official time-limit of 16 July 2001 (see Article 16(1)).

43. However, not even that argument strikes me as convincing. If it is true that there are numerous directives requiring partial harmonisation which explicitly permit Member States to adopt national provisions that are more comprehensive or stricter than those that are to be transposed, that does not of course justify any delays in pursuing the intended result of those directives. The Court's case-law has not only confirmed with clarity and precision the well-known principles regarding the obligation to implement a directive within the prescribed time-limit, but has also clearly established that, when the Community institutions subsequently amend a directive, Member States may not delay transposing that directive in order

17 — Case C-45/91 *Commission* v *Greece*, cited above, paragraph 21, dealing specifically with the obligations to make provision for the waste management plans laid down in Article 6 of Directive 75/442, in its original version, and Article 12(1) of Directive 78/319; see also Case C-387/97 *Commission* v *Greece*, cited above, paragraph 70 and, in relation to the 'technical difficulties' of implementing a directive, Case C-71/97 *Commission* v *Spain* [1998] ECR I-5991, paragraph 15.

18 — To that effect, see, for all, Case C-307/98 *Commission* v *Belgium* [2000] ECR I-3933, paragraph 54 in which further citations appear.

19 — Council Directive 1999/31/EC of 26 April 1999 on waste disposal (OJ 1999 L 182, p. 1; hereinafter 'Directive 99/31').

to make provision to deal with all the directives jointly. [20]

44. In conclusion, therefore, on the first of the complaints made by the Commission, I take the view that, since the French Republic has not yet made provision for drawing up waste management plans for the whole of its territory, it has failed to satisfy its obligations under Article 7(1) of Directive 75/442, as amended, and Article 6(1) of Directive 91/689.

B — *On the incomplete material coverage of the management plans*

1. On the inadequacy of the facts on which the Court has been asked to give judgment

45. Turning now to the substance of the complaints raised by the Commission against France in the present proceedings, it is necessary to take as a starting point the remarks concerning the incomplete material coverage of the management plans. Furthermore, on that point the French Government has raised a preliminary objection based on the alleged lack of information provided in the Commission's application with regard to the elements of law and of fact necessary for the purposes of the proceedings before the Court. According to the French Government, the Commission's complaints are based on general reservations regarding the completeness of the material coverage of the management plans and therefore fail to comply with the obligation to 'indicate... the specific complaints on which the Court is asked to rule and, at the very least in summary form, the legal and factual particulars on which those complaints are based'. [21]

46. However, I must point out that first to complain of a lack of information was the Commission when it complained that the information forwarded by the French Government during the pre-litigation procedure had not helped it in its task of ascertaining whether all the waste referred to in the directives in question had effectively been covered by the management plans already drawn up by the French Republic. In particular, the Commission objected that the national provisions communicated to it referred to concepts of waste as laid down in French law, concepts whose material scope had not even been defined. Consequently, the Commission had not been able to make a comparison with the corresponding concepts embodied in the directives and, in particular, had not been able to ascertain whether and which categories of waste continued to be excluded from the national management plans,

20 — See Case C-182/94 *Commission* v *Italy* [1995] ECR I-1465, paragraph 6. In the same vein, see Case C-152/98 *Commission* v *Netherlands* ECR 3463, paragraph 21, referring to a change of Community policy concerning measures to tackle water pollution introduced in directives subsequent to the directive which the Commission was complaining had not been transposed within the prescribed time-limits.

21 — Case C-52/90 *Commission* v *Denmark* [1992] ECR I-2187, paragraph 17, in which further citations appear.

although covered by the Community legislation. That was why the choice was made to charge the French Republic with the incomplete material coverage of the plans, and to support the charge with arguments relating only to certain categories of waste, whilst expressing reservations as to whether they could be extended to other situations.

47. In my opinion the Commission's complaint is well founded, and not merely because there have been undeniable delays on the part of France in informing the Commission of the implementing provisions for Directives 75/442 and 91/689, some of which, as we shall see, were only communicated in the course of the present proceedings. The fact is that, in reality both in the reasoned opinion and in the application initiating the present proceedings, the reservations expressed by the Commission did not exhaust the grounds of the complaints made against the French Government, but rather, were intended, to serve a premiss for the Commission's choice to select, as proof of that infringement, just three categories of waste for which the particulars available made it possible to proceed with an adequate supply of information. Accordingly, the fact that the Commission, faced with information deemed inadequate when judged against the obligations imposed by the directives, [22] limited itself to expressing the fear that those three cases were not isolated in no way prejudices, in my opinion, the admissibility of these proceedings.

22 — As regards the obligation to communicate the measures for transposing the directives in question, see Articles 7(2) and 16(1) of Directive 75/442, as amended, Article 2(2) of Directive 91/156 and Articles 8(1) and 10(1) and (3) of Directive 91/689.

2. On the substance of the complaint: introduction

48. As already noted, in order to contest the incomplete nature of the material coverage of the management plans, in breach of Article 7(1) of Directive 75/442, as amended, and Article 6(1) of Directive 91/689, the Commission makes reference to three categories of waste: polychlorinated biphenyls (hereinafter 'PCBs'), medical waste and special domestic waste.

49. In reply the French Government initially makes a point of a general nature. It maintains that it had complied with the provisions of the directives in question by specifying different categories of waste which fully cover all the waste referred to in the Community directives, even though the method chosen was somewhat idiosyncratic in that that Government proceeded as follows:

— for certain waste, such as 'domestic and related waste' and 'special industrial waste', a definition was supplied in a ministerial circular of 1 March 1994 (but submitted only in the course of the present proceedings) which also covered certain directives relating to the drawing up of regional or departmental management plans,

— next, in more general terms, by Decree No 97-157 of 15 May 1997 on the classification of hazardous waste (décret relatif à la classification des déchets dangereux: JORF of 23 May 1997, p. 7764; hereinafter 'Decree No 97-157', also submitted only in the course of the proceedings) provision was made to establish a complete classification of hazardous waste, albeit in the form of a simple nomenclature of such waste (Annex II to Decree 97-157) and thus without any specific provision relating to its management. In this way, however, if I have understood correctly, the French Government claims to have established a specific point of reference for drawing up the management plans without any specific indications as regards hazardous waste so that such plans could be extended to all the waste specified by the directives in question.

50. The French Republic therefore concludes that there are no residual categories of waste not covered by the provisions of the management plans, with the result that the obligations imposed by the directives have been complied with in full.

51. The Commission limits itself to pointing out that the French Government has only now supplied it with a definition of certain categories of waste and, despite that information, the legislative technique chosen by the French Government does not enable the Commission to establish with any certainty whether the categories of waste referred to in the existing management plans effectively guarantee the coverage intended by the Community legislation.

52. Even leaving aside the serious delay in communicating the aforementioned French provisions, their content does not appear such as to allay the Commission's reservations. But apart from that, it seems to me that the technique chosen by the French Government for transposing the directives is open to question. As the Commission itself points out, the decision to implement the directives in question by a mere ministerial circular is rather perplexing, particularly in the light of the Court's settled case-law that the Member States, in transposing a directive, must establish in the area concerned a specific legislative framework that makes the national law compatible with the provisions of the directive[23] in terms that do not give rise to doubts or ambiguities not only as regards the contents of the relevant national legislation and its compliance with the directive, but also as regards its format value and its suitability to operate as an appropriate legal basis for regulating the area. Accordingly, a mere practice or administrative circular, for example, are not sufficient for the purposes of correctly transposing a

23 — See, for example, Cases C-339/87 *Commission* v *Netherlands* [1990] ECR I-851, paragraph 25; C-59/89 *Commission* v *Germany* [1991] ECR I-2607, paragraph 28 and C-340/96 *Commission* v *United Kingdom* [1999] ECR I-2023, paragraph 27.

directive since, unlike authentic legislative sources, they do not guarantee legal certainty, binding obligations and publicity. [24]

53. On the other hand, I also consider as unsatisfactory the method of transposition which consists in the adoption of a ministerial decree containing a mere nomenclature of hazardous waste to be used subsequently for the purpose of drawing up the management plans that make no explicit reference to that category of waste. That is because, as the Commission points out in its reply, it is precisely in the management plans that must be found all the information needed to specify the types of waste to which such plans apply so that the Commission can verify the completeness of their material coverage. [25]

54. That said, I will now deal specifically with the Commission's complaints about the three categories of waste.

3. Polychlorinated biphenyls (PCBs)

55. The Commission points out that 22 of the 26 French regions do not have a management plan for PCBs. The French Republic does not deny that that was the situation in October 1998, that is to say at the expiry of the time-limit indicated in the reasoned opinion. However, after noting that by November 1999 the number of regions without plans had fallen to 12, the French Government objects that the continued omission does not constitute an infringement of Directive 91/689 on the ground that these must be regarded as applicable to the regional plans which do not make explicit reference to PCBs should be regarded as covered by the provisions of Decree No 95-157 containing a complete list of hazardous waste. [26] However, in its opinion it would be pointless now to review the remaining regional management plans given that it is in the process of drawing up a national plan for the decontamination and/or disposal of equipment containing PCBs in compliance with Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated triphenyls

24 — *Inter alia*, see Case C-239/85 *Commission* v *Belgium* [1986] ECR 3645, paragraph 7; C-58/89 *Commission* v *Germany* [1991] ECR I-4983, paragraph 13; C-306/89 *Commission* v *Greece* [1991] ECR I-5863, paragraph 19 and C-96/95 *Commission* v *Germany* [1997] ECR I-1653, paragraph 38.

25 — I note that Article 7(1) of Directive 75/442 as amended provides that:
'... the competent authorities shall be required to draw up waste management plans. Such plans shall relate in particular to:
— the type, quality and origin of waste to be recovered or disposed of,
— general technical requirements,
— any special arrangements for particular wastes,
— suitable disposal sites or installations.
Such plans may, for example, cover:
— the natural or legal persons empowered to carry out the management of waste,
— the estimated costs of the recovery and disposal operations,
— appropriate measures to encourage rationalisation of the collection, sorting and treatment of waste'.

26 — That PCBs should be considered hazardous waste is beyond doubt seeing that they are explicitly referred to in Annex I.A., point 10, to Directive 91/689.

(PCB/PCT) (OJ 1996 L 243, p. 31; hereinafter 'Directive 96/59'). Pursuant to Article 11(1) of that directive, Member States must draw up programmes and plans for the decontamination, collection and/or disposal of equipment containing PCBs by 16 September 1999.

56. I could limit myself to noting that the French Government itself admits that, even today, not all regions have a management plan for PCBs and conclude from that fact alone, that the Commission's complaint concerning that category of waste should be regarded as well founded. However, for the sake of completeness, I will now briefly deal with the other arguments raised by the French Government.

57. As regards the argument that regional plans which make no explicit reference to PCBs are covered by the provisions of Decree No 97-157 containing a list of hazardous waste (including PCBs), I have already said that this legislative technique cannot be regarded as satisfactory because it is essentially limited to a general reference, whereas Article 7(1) of Directive 75/442 (referred to in Article 6(1) of Directive 91/689) requires that the management plans themselves provide quite detailed information in respect of hazardous and indeed all waste.

58. Next, as regards the alleged pointlessness of transposing Directive 91/689 following the adoption of Directive 96/59, I must point out along with the Commission that Directive 91/689 refers explicitly to PCBs and therefore they cannot be excluded when transposing that directive; that the two directives lay down separate time-limits for transposition and the Commission has still not received from the French Government any notification concerning the transposition of Directive 96/59; that Directive 96/59 does not authorise any derogation with regard to the transposition of Directive 91/689; that the fact that Article 11 of Directive 96/59 provides that the Member States must make provision for programmes and plans for the decontamination, collection and/or disposal of equipment containing PCBs cannot justify the lack of management plans for substances containing PCBs; and, finally, that in any case a delay in transposing a directive (Directive 91/689 should have been transposed by 27 June 1995) cannot be justified by relying on the work under way to implement a different directive (in the present case, Directive 96/59).

59. Accordingly, I consider the complaint on PCBs to be well founded.

4. Medical waste

60. According to the Commission, the French Government itself accepts that there are still five regions, among those that already have a waste management plan, whose plans do not cover medical waste. A further six regions are covered by 'regional schemes for the disposal of hospital waste' which was the subject of a ministerial circular of 21 September 1990 calling on the regions to make provision for the disposal of hospital waste and supply general information regarding the methods and instruments to be employed for that purpose. However, the Commission notes that those 'schemes' have still not been communicated to it by the French authorities and therefore it is not in a position to assess whether they comply with the requirements of the Community legislation, particularly as the same French authorities were supposed to have replaced the aforementioned 'schemes' by 'plans'. Furthermore, the Commission has strong reservations concerning the guarantees that can be offered by the ministerial circular as regards compliance with the requirements of Directive 75/442. Accordingly, it concludes that the French Republic has not fulfilled the obligations imposed on it by the directives in question even in the case of the six regions affected by the aforementioned 'schemes'.

61. The French Government does not dispute the fact that in five regions there is still no management plan for the category of waste in question, but it again stresses, referring to the use of the phrase 'as soon as possible' in Article 7(1) of Directive 75/442, that the expiry of the time-limit for transposing that directive does not entail a failure to comply with it. As regards the six regions covered by the 'regional schemes for the disposal of hospital waste', the French Government maintains that, under the terms of the abovementioned circular, those schemes are equivalent to management plans already drawn up for other regions in compliance with Article 7(1) of Directive 75/442 and Article 6(1) of Directive 91/689. In any event, and whilst acknowledging that it has not communicated those 'schemes' within the prescribed time-limit, the French Government does not consider a complaint concerning the merits of the scheme admissible before the Commission has examined them.

62. I do not think that there is any need for me to dwell on the complaints concerning the first five regions as the French Government itself admits the delay, nor does it seem to me that such delay can be justified by reliance on the phrase 'as soon as possible' in view of what I have already said on that matter (see above, points 33 to 39). However, as regards the six regions said to be covered by 'regional schemes for the disposal of hospital waste', I reiterate the reservations expressed earlier, and shared by the Commission, on recourse to a mere ministerial circular to provide the regions with instructions concerning the future adoption of those 'schemes'. While accepting that such instructions do in fact exist, even though they have never been communicated to the Commission, I note that the circular in question contains no indication of the time-limits within which they are to be carried out; it merely

provides that, should the region not be the most appropriate administrative unit, the regional prefects may decide, in cooperation with the departmental prefects, that preparatory work on the schemes in question be carried out, at least in part, at departmental level, which only provides further confirmation of the unsuitability of a circular for ensuring that directives are implemented in full.

63. Finally, as regards the French Government's objection to the Commission's complaint that the aforementioned schemes are not equivalent to the waste management plans as provided for in the Community directives in question, I simply note that the ministerial circular refers only to 'hospital wastes', whilst Annex I.A. of Directive 91/689 refers to broader categories of medical waste including (in addition to the specific mention of 'hospital wastes') 'other clinical wastes' (point 1) and 'pharmaceuticals, medicines and veterinary compounds' (point 2). Essentially, at least from the point of view of their range of material coverage, the schemes (if they exist) would not appear to have the same scope as the management plans referred to in Directive 91/689.

64. The Commission's complaint concerning the category of medical waste must therefore be regarded as well founded.

5. Special domestic waste

65. Finally, as regards special domestic waste, the Commission considers as unsatisfactory the method of transposition chosen by the French legislature which has provided that the category in question may be omitted from regional management plans and included in departmental plans or, alternatively, that special domestic waste may be included simultaneously in a regional plan and a departmental plan. The Commission notes that 18 departments still do not have management plans either at regional or departmental level.

66. In reply, the French Government contends that the present complaint is in part a repetition of the first complaint in that 15 of the aforementioned 18 departments were already referred to by the Commission to demonstrate the incomplete *geographical* coverage of the management plans. As for the remaining 3, namely the departments of l'Oise, l'Haute-Loire and le Puy de Dôme, the French Government notes that the draft management plan for the first department was adopted by the prefect on 19 October 1999 (and therefore, in any event, after the expiry of the time-limit laid down in the Commission's reasoned opinion of 5 August 1998), whilst the remaining plans were under review. However, once again the French Government justifies its own delay by reference to the phrase 'as soon as possible' in Article 7(1) of Directive 75/442 and Article 6(1) of Directive 91/689.

67. There is no doubt, and the Commission itself acknowledges the fact, that the present complaint partially overlaps with the complaint about the incomplete geographical coverage of the management plans. However, that complaint remains valid for the three departments for which the French Government itself admits that no measures on special domestic waste have been adopted. Nor does these seem to me to be any reason to the justification once again put forward by the French Government in order to exclude the infringement, as I have already dealt at some length above (see paragraphs 33 to 39) with the meaning to be attributed to the phrase 'as soon as possible'.

68. In conclusion, I consider that the Commission's second complaint should also be upheld seeing that the French Republic has made no provision to draw up waste management plans that provide complete material coverage.

C — *Non-inclusion of a specific chapter on packaging waste in the management plans already drawn up*

69. Finally, the Commission complains that the waste management plans already drawn up by the French Republic do not contain a specific chapter on packaging waste, thereby infringing Article 14 of Directive 94/62 which should have been transposed by 30 June 1996 (see Article 22(1)).

70. The French Government objects that Article 2(d) of Decree No 96-1008 explicitly provides for the inclusion of the indication of measures on packaging waste in the management plans and that Article 12 of that decree requires management plans not complying with that provision to be reviewed within a period of three years. According to information supplied by the French Government, the process for reviewing the management plans is still under way. However, in the light of the measures already taken and the fact that Article 14 of Directive 94/62, referring to Article 7 of Directive 75/442, again uses the phrase 'as soon as possible', thereby making the time-limit for the transposition of the directive 'flexible', the French Republic contends that the directive has not been infringed.

71. I do not think that I have to spend much time on that point. Given that the French Government itself accepts that not all the waste management plans already drawn up contain a specific chapter on packaging waste, and in view of my earlier comments on the phrase 'as soon as possible' (see paragraphs 33 to 39), I consider that the Commission's third complaint is also well founded.

72. In conclusion I propose that the Court declare that, by failing to draw up waste management plans for the whole of its territory or all its waste and by failing to include in all existing management plans a specific chapter on packaging waste, that the French Republic has failed to fulfil its obligations under the relevant Community directives.

IV — Costs

73. Pursuant to Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for. As the Commission has applied for costs and in view of what I have just said concerning the outcome of the proceedings, I consider that that application should be upheld.

V — Conclusion

74. In the light of the above considerations, I propose that the Court declare as follows:

(1) By failing to draw up waste management plans for the whole of its territory or all its waste and by failing to include in all existing management plans a specific chapter on packaging waste, the French Republic has failed to fulfil its obligations under Article 7(1) of Council Directive 75/442/EEC of 15 July 1975 on waste (as amended by Council Directive 91/156/EEC of 18 March 1991), Article 6(1) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste and Article 14 of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste.

(2) The French Republic shall pay the cost.